

ADMINISTRATIVE POLICY



STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

TITLE: FAMILY LEAVE ACT

NUMBER: ES.E.1

CHAPTER: RCW [49.78](#)

SEE ALSO: [ES.C.10](#)

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This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Employment Standards should be consulted.

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1. What is the Family Leave Act?

The federal Family and Medical Leave Act of 1993 (FMLA) requires employers of **50 or more** employees to provide up to 12 weeks of unpaid leave during any 12-month period. The employee has the right to take leave for the birth or adoption of a child; to care for a sick spouse, child or parent; or for the employee's own serious health conditions. Washington has a similar law, the Family Leave Act, [RCW 49.78](#), which applies to employers of **100 or more** employees and is almost completely superseded by the FMLA. Therefore, in 1997, the Legislature directed the department to cease administration and enforcement of the Washington Family Leave Act except in two areas where the state law is more protective than the FMLA:

- An eligible employee who takes leave for care of a newborn, adoption of a child under 6, or care of a terminally ill child under 18, has a right to be returned to a work place within 20 miles of the employee's work place when leave began. See [RCW 49.78.070\(1\)\(b\)](#)
- The leave allowed for disability due to pregnancy or childbirth under the state Human Rights Commission (See [WAC 162.30.020](#)), is *in addition to* FMLA leave to care for a newborn or for any other FMLA-qualifying reason. The leave for

disability due to pregnancy or childbirth is not concurrent with the FMLA leave; both are protected leave categories.

2. When do these provisions apply?

These provisions pertain only to leave for the care of a newborn or newly adopted child under the age of six or for a child under 18 years with a terminal health condition, and are subject to the following definitions of “employee” and “employer” (See [RCW 49.78.020](#)):

- **“Employee”** means a person other than an independent contractor employed by an employer on a continuous basis for the previous fifty-two weeks for at least thirty-five hours per week.
- **“Employer”** means any person, firm, corporation . . . including state and local government, which employed a daily average of 100 or more employees during the last quarter.

3. What is meant by returning to employment?

Under [WAC 296-134-070](#) of the Family Leave rules, an employee returning from family leave has a right to return to the same position he/she formerly occupied or to a position with equivalent pay and benefits at a work place within 20 miles of the employee's workplace when the leave commenced. When an employer's circumstances have changed to the degree that an employee cannot be reinstated to the same position or one with equivalent pay or benefits, then the employee must be reinstated in any other vacant position for which the employee is qualified.

For the purposes of this interpretation, the term "former workplace" can be defined as an office, site or location where the employee worked prior to commencing Family Leave.

For employees who do not travel and who spend a majority of their time in one location, the 20 miles would be calculated from that one location. For employees who do travel a majority of their time as a regular part of their job, the 20 miles would be calculated from the outside limit of their former area.

An example of this would be an office worker who spends a majority of his/her time in a specific office, then the 20-mile distance would be calculated from the former office. Or for an employee in an occupation such as a truck driver, where the assigned location might be "the city of Seattle", the 20 miles would be calculated starting from the Seattle city limits.

4. Where can I get more information about disability due to pregnancy or childbirth?

Questions regarding the definition of “sickness or temporary disability” must be directed to the [Human Rights Commission](#) for interpretation. Call 1-800-233-3247.